PRIVY COUNCIL REPORT

CHAY CHONG HWA & ORS. v. SEAH MARY

[P.C. (Lord Bridge of Harwich, Lord Templeman, Lord Ackner, Lord Oliver of Aylmerton & Sir Ivor Richardson) October 6 & 27, 1986]

[Privy Council Appeal No. 69 of 1984]

Land Law – Sale and purchase of property – Administrators selling interest of deceased in property – Whether grant of letters of administration of estate of deceased necessary for completion – Revised Singapore Conditions of Sale – Probate and Administration Act (Cap. 23), ss. 2 & 37 – Estate Duty Act (Cap. 137), ss. 37, 38 & 39 – Land Titles Act (Cap. 276), ss. 47, 92 & 93.

Probate and Administration – Sale agreement – Administrators to sell interest of deceased in property – Whether grant of letters of administration of estate of deceased necessary for completion of purchase – Probate and Administration Act (Cap. 23), ss. 2 & 37.

Conveyancing – Whether grant of letters of administration of estate of deceased necessary for completion of purchase – The (Revised) Singapore Conditions of Sale, condition 5 – Case law authority – Reference to.

This was an appeal from the decision of the Court of Appeal of Singapore ([1984] 2 M.L.J. 251). The property in question was owned as tenants in commons by the first three appellants and one Lee Ee Hoong, who died intestate on March 16, 1975 and the fourth appellants were the administrators of his estate.

The appellants had agreed to sell the property to the respondent. When the time came for completion the respondent's solicitors asked for the production of the letter of administration to the estate but this was refused. The solicitors for the appellants then purported to annul the sale and they returned the deposit. The respondent applied for a declaration that the appellants were not entitled to call for completion without producing the grant and that the notice purportedly given to cancel the sale was invalid and that the contract still subsisted. The High Court granted the declaration sought and this was upheld in the Court of Appeal. The appellants appealed.

Held, dismissing the appeal: (1) the respondent's insistence upon the extraction and production of the actual grant of Letters of Administration was both justified and necessary;

(2) the appellants acted unreasonably in declining to comply with the respondent's request for the production of the grant.

Case referred to:

(1) *M.T.A. Mootiah Chitty* v. *Ong Hai Swee & Anor.* (1911) 12 S.S.L.R. 84.

PRIVY COUNCIL APPEAL FROM SINGAPORE.

Robert Reid Q.C. (*Judith Jackson* with him) for the appellants.

Gerald Godfrey Q.C. (*Geoffrey Zelin* with him) for the respondent.

Cur. Adv. Vult.

Lord Oliver of Aylmerton (delivering the Judgment of the Board): The three first named appellants are, and were at all material times, tenants in common and the owners respectively of three undivided fourth shares in a property known as No. 12 Sunset Square, Singapore. The fourth undivided share was owned by one Lee Ee Hoong who died intestate on March 16, 1975 and the fourth-named appellants, Wong Chow Thye and Lee Tong Keong, are the administrators of his estate. By a written contract dated September 30, 1980 the appellants agreed to sell the property to the respondent at a price of $420,000. The contract incorporated the general conditions known as "The (Revised) Singapore Conditions of Sale," condition 5 of which provides:

"If the purchaser shall make and insist on any objection or requisition either as to title, Conveyance or any matter appearing on the Particulars, Sale Plans, Conditions or otherwise, which the vendor shall be unable, or on the ground of difficulty, delay or expense or on any other reasonable ground, be unwilling to remove or comply with, the Vendor shall, notwithstanding any previous negotiation or litigation, be at liberty, on giving to the Purchaser or his Solicitor not less than ten days' notice in writing to annul the sale, in which case, unless the objection or requisition shall have been in the meantime withdrawn, the sale shall at the expiration of the notice be annulled, the Purchaser being in that event entitled to a return of the deposit but without interest, costs or compensation."

The contract recited the death of Lee Ee Hoong and that "letters of administration to his estate were granted by the High Court of the Republic of Singapore to the Administrators on October 10, 1975 in Probate No. 934 of 1975." This was not strictly accurate in fact for although the fourth-named appellants had obtained an order that Letters of Administration be granted to them they had not in fact obtained an actual grant pursuant to that order. It is from that fact that the appeal arises. Clause 3 of the contract provides initially that "The title shall be properly deduced." The only other provisions to which it is necessary to refer are clauses 4 and 9 which are respectively in the following terms:

"4. The Administrators shall obtain from the Commissioner of Estate Duties a certificate releasing the property from any further claim for estate duty in respect of the estate of the deceased on or before completion. Upon the issue of such certificate, a copy thereof shall be produced to the Purchaser for her inspection."

"9. The sale and purchase shall be completed and the balance of the purchase money paid at the office of Messrs. Kao & Johns within 14 days after notice has been received by the Purchaser or her Solicitor that the certificate referred to in Clause 4 hereof has been obtained."

On October 16, 1980, the vendors' solicitors indicated to the purchaser's solicitors that they were ready to complete. On October 21, the latter replied enumerating the documents which they would require on completion. Item 7 was "original copy of Letter of Administration No. 934 of 1975." On the face of it and having regard to the recital in the contract, that seems an innocuous and not unreasonable request, but the vendors' solicitors' immediate reaction was to refuse it. On October 29, 1980 the respondent's solicitors replied saying (again reasonably enough):

"With reference to paragraphs 3 and 4 of your letter under reply, please note that we would require the original Letters of Administration to enable us to register our Transfer."

Their Lordships have not been told of any reason why there should have been the slightest difficulty in obtaining and producing the grant which the respondent requested, but the appellants' solicitors persisted in their refusal and on January 21, 1981 they gave 10 days' notice – purporting to act under condition 5 of the General Conditions – to annul the sale unless the respondent's requirement was withdrawn. An offer by the respondent's solicitors to complete provided that Letters of Administration were extracted and produced within three months of completion was refused and on February 4, 1981 the appellants' solicitors claimed that the sale was annulled, returned the deposit and have since refused to proceed. On March 13, 1981 the respondent issued an originating summons claiming appropriate declarations that the appellants were not entitled to call for completion without producing the grant, that the notice purportedly given under clause 5 of the General Conditions was invalid and that the contract remained on foot. On November 4, 1982 Lai Kew Chai J. granted the declaration sought. The appellants appealed to the Court of Appeal of Singapore which unanimously upheld the decision of the learned judge and from that decision the appellants now appeal to their Lordships' Board.

To an English conveyancer the proposition that a personal representative's title to property can be properly deduced without production of the Grant of Probate or Letters of Administration is at first sight a startling one, but Mr. Reid Q.C., who appears for the appellants, seeks to justify it by reference to the provisions of the Probate and Administration Act (Cap. 23) section 37 of which provides as follows:

"(1) Where a person dies intestate his movable and immovable property until administration is granted in respect thereof shall vest in the Chief Justice in the same manner and to the same extent as it vests in the Probate Judge in England.

(2) On the making of an order for a grant of administration by the court all such property shall vest in the administrator."

The procedure for obtaining a grant in Singapore is rather different from that in England, where the satisfaction of the claim of the Revenue is a preliminary step. In Singapore, as their Lordships understand the position, the procedure for obtaining a grant is first to petition the court for a grant to issue. The petition is supported by affidavit evidence establishing the title to grant and the order for the grant to issue normally takes the form, as it did in the instant case, simply of the endorsement on the petition by the Registrar of the words "be it so." The settlement of the Revenue claim, the giving of security (where appropriate) and the Administrator's oath and bond are effected after the making of the order but before the letters are actually issued. That is what occurred in the instant case. The fourth-named appellants petitioned for grant on October 7, 1975. On October 10, 1975 the Registrar endorsed the petition with the words "be it so" and it is not in dispute that that constituted the making of the order for a grant of administration envisaged by section 37(2). The appellants' argument is that since, under that subsection, the deceased's property vested in the fourth-named appellants they were then in a position to make title to the property without the necessity of actually obtaining Letters of Administration pursuant to the order. The Court of Appeal, in (if their Lordships may say so respectfully) an admirably clear and concise judgment, rejected the appellants' contentions on three grounds. In the first place, the insufficiency of the production simply of the petition with the endorsed order as proof of the personal representative's title had been conclusively established in Singapore as long ago as 1910 by the decision of the Court of Appeal in *M.T.A. Mootiah Chitty* v. *Ong Hai Swee and Another.*[1]

Mr. Reid has sought to distinguish that case on the ground that the basis for the decision, at least in the judgment of Law Ag. C.J., was that the purchaser was entitled to have a title which could

be registered under the Registration of Deeds Ordinance 1886, which does not apply in the instant case. That, however, was not the only ground for the decision and it is clear from the judgment of Thornton J. (with which Ebden J. concurred) that the court considered that an actual grant was an essential link in the title of the personal representative to dispose of the estate. Their Lordships are entirely unpersuaded that the case is distinguishable from the instant case in any relevant respect and, even if they were so persuaded, would in any event be extremely reluctant to upset an authority by reference to which conveyancing in Singapore has been regulated for over seventy years.

Secondly, the Court of Appeal also rejected – and, in their Lordships' judgment, clearly rightly rejected – the contention that the matter was in any way affected by the provisions of section 37 of the Probate and Administration Act. That section, as the court pointed out, is concerned only with the vesting of property so as to avoid a vacuum. To quote from the judgment of the court:

"The mere vesting of such property by operation of law does not authorise an administrator to deal with the same. He must proceed to extract the grant of Letters of Administration and only upon such grant being extracted is he clothed with the authority and power to deal with the property of the deceased."

That, as the court mentioned, is reinforced by the definition of Letters of Administration in section 2 of the Act, which is in the following terms:

" 'Letters of administration' means a grant under the seal of the Court issuing the same, authorising the person or persons therein named to administer an intestate's estate in accordance with the law."

Thirdly – and again their Lordships are in entire agreement – the court was of the view that without the grant the appellants were simply unable to complete the sale. Mr. Reid was forced to concede that it was at least uncertain whether the Registrar under the Land Titles Act could be persuaded to accept the mere order for a grant as establishing the title of the appellants to deal with the land and thus enable the purchaser to be registered as proprietor and that in itself seems to their Lordships to be sufficient to dispose of the point in a case where the contract in terms provides that title shall be "properly deduced." But, in fact, as the Court of Appeal went on to point out, the provisions of the Land Titles Act, sections 47, 92 and 93, indicate that before the fourth-named appellants could pass to the respondent a title which would enable her to be registered as proprietor they would themselves need to be registered as proprietors, a process for which, under the rules, the extraction of a grant is necessary.

Their Lordships are, therefore, in agreement with the Court of Appeal that the respondent's insistence upon the extraction and production of the actual grant of Letters of Administration was both justified and necessary.

The appellants, however, argue that even on this footing they are entitled to succeed because, they say, clauses 4 and 9 of the contract show that what the respondent was agreeing to do was to accept that a certificate of Revenue clearance in respect of the land should be sufficient to establish, without more, the appellants' title. The argument is that since no grant could issue without the Revenue claims being satisfied, an expressed reference to the production of a clearance certificate, which was to operate as the trigger for completion, shows that the respondent was agreeing to accept this as the one and only document upon which she was prepared to rely in accepting the appellants' title. The point is a short point of construction and their Lordships have no difficulty in resolving it in the respondent's favour. In the first place, if it had been intended to oust the purchaser's right to a proper proof of the vendors' title, their Lordships would expect so unusual a provision to be expressed in very clear terms and not to be left to the implication upon which the appellants are compelled to rely. But in fact the expressed reference in the contract to a certificate releasing the property makes perfectly good sense in any event. It has to be borne in mind that the contract in fact recited that the fourth-named appellants had obtained a grant. Section 38(1) of the Estate Duty Act provides:

"No grant of representation shall be issued by any court until the Commissioner has certified in a certificate to be filed in court that the estate duty affidavit has been delivered and the estate duty payable in respect of the estate has been paid or he has allowed payment thereof to be postponed under section 39 of this Act, and stating the value as assessed by the Commissioner of the property on which estate duty is payable."

Section 39 empowers the Commissioner to postpone payment of duty in certain circumstances which might well apply in the instant case. Indeed, the evidence indicates that that is in fact what occurred, for the Letters of Administration which were ultimately granted in May 1981 bear a certificate that payment of duty was postponed. Mr. Reid concedes that even though payment of

duty is postponed the duty remains a charge on the deceased's property in the absence of revenue clearance. Revenue clearance is provided for by section 37(1) of the Act which provides that the Commissioner, on being satisfied that the full estate duty has been or will be paid in respect of an estate or any part thereof, shall, if required by the person accounting for the estate duty, give a certificate to that effect which shall discharge from any further claim for estate duty the property shown by the certificate to form the estate or part thereof as the case may be. But there is nothing in the Act to indicate that the mere fact that the Commissioner agrees to postpone payment of duty requires him to issue the certificate under section 37. Thus the certificate which is called for in clause 4 of the contract was necessary quite apart from the production of the grant if the respondent was to obtain an unencumbered title to the property, since without it the property would remain subject to the estate duty charge.

Finally, the appellants advanced, as they did in the Court of Appeal, a faint argument that they had reasonable grounds for declining to comply with the respondent's request for the production of the grant. The Court of Appeal dealt with this very shortly. They found the conclusion that the appellants acted unreasonably "irresistible." Their Lordships find it equally so.

For the reasons they have given, their Lordships dismiss the appeal with costs.

Appeal dismissed.

Solicitors: *Jacques & Lewis; Coward Chance.*

SINGAPORE REPORTS

J.B. JEYARETNAM v. GOH CHOK TONG

[C.A. (Wee Chong Jin C.J., Lai Kew Chai & Chua JJ.)
August 19, 1986]
[Singapore – Civil Appeal No. 90 of 1984]

Defamation – Slander – Press conference – Words uttered at – Whether defamatory of plaintiff – Distinction between office of profit and office of honour – Fair comment – Defamation Act (Cap. 32), s. 5.

Evidence – Defamation – Proof of special damage.

Practice and Procedure – Appellate Court – Findings of fact by trial judge – To accord respect to.

In the course of directing his party's political campaign to retain the Anson seat in a parliamentary by-election, the defendant held a conference with the media at which he said, *inter alia*, that he was "inclined to believe" that the plaintiff, an opposition candidate in the by-election, had engineered an exodus of some two-thirds of the audience who had attended the inauguration of the Singapore Democratic Party ("SDP"), a political party which was friendly to the plaintiff and which had invited the plaintiff as its guest speaker.

In a claim in the High Court for damages and an injunction arising out of the slander, the plaintiff's claims were dismissed with costs (see [1985] 1 M.L.J. 334). The plaintiff appealed against the decision of the High Court. Although the defendant did not file a cross-appeal, the defendant filed a Respondent's Notice wherein he contended that if the learned trial Judge had erred in holding that the words complained of were not calculated to disparage the plaintiff in his office as Secretary-General of Workers' Party, the defendant would further contend that the learned trial Judge had correctly dismissed the plaintiff's claim for damages for slander because the plaintiff's said office was an office of honour or credit and not an office of profit and the particular words complained of by the plaintiff were not actionable without proof of special damage and that there was no such proof in this case. The issues whether the words spoken were defamatory and whether they were spoken on an occasion of qualified privilege were no longer in contention.

Held, dismissing the appeal: (1) the learned trial Judge was correct in finding that quite apart from not being calculated to disparage the plaintiff in his office, the words were not actionable because they did not impute to the plaintiff the kind or quality of misconduct which would have rendered the words actionable without proof of special damage. Therefore the plaintiff had failed to establish that the words complained of was actionable without proof of special damage;

(2) the plaintiff had not proved any special damage to his office of honour;

(3) the defendant had succeeded in establishing his defence of fair comment;

(4) the plaintiff has failed to discharge his burden of proving that the defendant was actuated by express malice when he uttered the words complained of;

(5) an appellate court must give the greatest respect to the findings of facts of a trial Judge and ought not to